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Re: March 16, 2005 Meeting Proposed Rules
Welfare Exemption, Low Income Housing

Dear Ladies and Gentleman:

First, as always, thank you for the opportunity to present comments and concerns directed toward the proposed rule changes pertaining to the Welfare Exemptions described in Mr. Kinnee's January 14, 2005 letter to interested parties.

By way of background, our firm has represented literally hundreds of low- income projects and a very large number of low income housing [1] developers over the past

[1] Low Income Housing as used in this letter means housing for individuals and families whose income fits within certain categories described in Health and Safety Code Sections 50053 & 50079.5. These California statutes take their lead from the federal Internal Revenue Code definitions of low income housing as contained in Section 42 of the IRC. The implementation of all housing programs in California focuses on "median income" numbers which are published by the federal Housing And Urban Development agency ("HUD") on an annual basis for each county in California.

eighteen or so years. Accordingly, we are familiar with every aspect of the specialized financing for these apartment developments, as well as the ever- increasing need for more housing resources for the low to moderate income citizens of California. In the past eighteen years, the property tax exemption for low income housing developers has become a key and irreplaceable component in the financing of affordable housing, due in part to increased land costs, city fees, construction costs, utility costs and insurance costs among many others. Thus the exemption from property taxes is more important than ever in helping low income housing developers to:

> "(B) Certify that the funds which would have been necessary to pay property taxes are used to maintain the affordability of , or reduce rents otherwise necessary for, the units occupied by lower income households." [Rev. & Tax § 214(g)(3)(B), circa September 30, 1988]

We are always concerned with new developments, especially if we perceive they hinder or endanger the continued construction or maintenance of low income housing in California, as the need for housing for all segments of our society has not lessened over time. Rather it has increased due to the some of the same economic factors making California housing some of the most valuable and expensive in the nation. As such it is of utmost importance that the repeated Legislative pronouncements favoring the facilitation and construction of low income housing in California, even where special considerations must be given by affected agencies.

In light of the overall California policy goals in mind, we are writing to you particularly regarding Proposed Rule(s) 140, 141, 142 and 143, as well as the "Issues 1-8" contained in Mr. Kinnee's January 14, 2005 letter to interested parties mentioned above.

The current "Low Income Housing Tax Credit" and the "Non-recourse Bond" programs under Section 42 of the Internal Revenue Code are two of the only major funding programs for low income housing construction in California. In addition, there are limited funds from the state and federal government (administered in California by the State Department of Housing and Community Development and ("HCD") and the California Housing Finance Agency, ("CalHFA"). There are also limited redevelopment agency ("RDA") funds available in some California cities to assist the development of low income housing. However, overall, the number and amount of subsidies has decreased over the last twenty years, rendering the admonition quoted from Section 214 (g) to certify that the exemption is necessary to maintain affordability has become an easier certification to make due to the various cost increase factors mentioned herein.

Below, we give you our opinion as to the questions presented in Mr. Kinnee's letter:

ISSUE 1: Should Tax Credit Only Properties Have An Exemption After They No Longer Receive Tax Credits?

Of particular concern to us, is what we believe to be at least some of the Board staff's interpretation of Rev. & Tax § 214(g)(1)(A) & (B). That subsection states in pertinent part:

"(A) The acquisition, rehabilitation, development, or operation of the property, or any combination of these factors, **is financed with tax-exempt mortgage revenue bonds or general obligation bonds, or is financed by local, state, or federal loans or grants and the rents of the occupants who are lower income households do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.**

(B) The owner of the property is **eligible for and receives low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986, as added by Public Law 99-514.** "

It has come to our attention that there is some debate at the Board or with staff regarding the length of time an otherwise qualifying project and developer/ owner maintains his/ her or its financing qualifications under Section 214(g). With this understanding in mind, we focus on the particular words of the statutes we think are in dispute. In particular, we believe the meaning of the word "receive" in subsection (B) above vis a vis the "receipt" of low income housing tax credits, which is one of the alternative forms of financing qualifying an ownership entity under Revenue and Taxation Code Section 214(g), is simply that the project "receive" the credits at some point in time, (in the same or similar fashion it would "receive" the proceeds from a loan closing or a bond closing). [2]

Our understanding of "receipt" in this statutory context is that the limited partnership "receives" a reservation letter from the California Tax Credit Allocation Committee (which has been previously approved by the Board staff as adequate under 214 (g)(A)(i) and (ii) as the equivalent of a recorded deed restriction or a verifiable agreement with a public agency) and then later "receives" an actual allocation of low income housing tax credits.

We do not believe a fair reading of this subsection would imply the words "continually receives throughout the period the tax exemption is claimed" or language to that effect. The statutory language is un-ambiguous in that it refers to simply "receipt" and not "annual receipt" or "continual receipt" for some extended period of time. Therefore, the fact that the limited partnership / developer has actually "received" the reservation letter, then later received the tax credits from the CTCAC, should be sufficient to comply with this ordinary and unambiguous sentence of Subsection B quoted above.

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[2] This meaning of the word "receipt" is consistent with *Webster's New World Dictionary College Ed.* (1991), at pg. 1120 and *Ballentine's Law Dictionary* (1969).

In fact, if this use of the word "receive" were given any other interpretation, it could lead to absurd results. For example, if the limited partnership "received" its permanent loan on a particular day, say the date of the real estate loan closing; that would be the only day it "received" the funds, although the lender would place (low income) restrictions on the borrower for 30 or more years. We can't imagine that SBOE would take the position that the property tax exemption based on other financing sources pursuant to Rev. & Tax § 214(g)(1)(A) would exist only on the date the loan closed and perhaps this situation is made more clear by the extension of the paragraph in subsection (A) which adds the fact that the rents charged to the tenants will not exceed those described in the deed restrictions or regulatory agreements (which obviously extend for 30 to 55 years even though technically speaking the "financing" may have occurred in one 24 hour period.)

Statutory interpretation requires ascertainment of the intent of the Legislature under familiar and established principles.

> "[i]f the language of the statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary." (Ibid.) When the statutory language is unambiguous, " 'we presume the Legislature meant what it said and the plain meaning of the statute governs.' " (*Diamond Multimedia Systems, Inc. v. Superior Court* (1999) 19 Cal.4th 1036, 1047.)

ISSUE # 2: Should Low Income Developments Still Receive Property Tax Exemption After Their Financing Is Paid Off ?

For the sake of brevity, using the same analysis above, the key to Issue #2 is whether or not the apartment project is restricted by a regulatory agreement. For example, as mentioned above, in order to achieve maximum "points" in the competition for the 9% tax credits and 4% credits associated with non-recourse bond funding, the developers typically agree to a 55 year regulatory period. However, the funding structure, which is usually a combination of a "construction" loan, which last perhaps 2 years while the project is being completed, then a "permanent" loan which extends normally for a term of 30 years. Often there are other (e.g. City RDA or HOME) funding sources added to the total "permanent" financing. However, typically, all the "permanent financing" is due on or before the end of thirty (30) years, but the tax credit regulatory agreement normally extends to fifty –five (55) years. That is the **low-income rent structure** which is the key to this property tax exemption, is mandated (and agreed upon) for at least fifty-five years.

The problem has not arisen yet, as the tax credit program and the tax exemption under Section 214(g) itself has have existed approximately the same length of time, which is less than 20 years, but our position is that, since the intent of the Legislature in 1988 [3] was the creation of a property tax exemption for apartment projects in which the owners / developers with the proper internal structure agreed to a binding deed restriction and/ or regulatory agreement restricting rent levels to those prescribed in Health & Safety Code §§ 50053 & 50079.5, the property tax exemption should not automatically or at least necessarily end even after 55 years under the original regulatory agreement, so long as the owner of the property still has the appropriate internal structure to support application for the exemption and agrees to another recorded regulatory agreement restricting the rents charged to the tenants for an additional period of time. [See for e.g. the requirements for deed restriction or enforceable agreement contained in the Assessor's Handbook, Section 267, pg. 67]

The focus of this exemption has always been to facilitate the construction and maintenance of decent, safe and sanitary apartment units affordable to households earning at or near 1/2 the median income as established by HUD for each county in California. [4] The situation of lower income individuals desperately needing adequate housing is unlikely to change in the near future, therefore the exemption should continue as long as the criteria set forth in Section 214(g) are met by a given limited partnership and its project. ***Similarly, in the event said exemptions were denied to projects otherwise complying with Section 214(g) and government agency rent restrictions imposed for 55 years in most cases, many, if not all, projects would no longer be financially feasible (due to the imposition of property taxes and the prohibition against raising rents) relative to meeting debt service obligations to the lender(s) and would ultimately suffer foreclosure. [5] This would in turn result in the formerly "affordable" units being removed from the low income housing stock and converted to market rate housing. We respectfully submit to you that this was not the legislative intent behind Section 214(g).***

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[3] The Welfare Exemptions as a whole were first adopted as a California Constitutional amendment November 7, 1944. [Assessor's Handbook, Section 267, Pg. 1, fn. 3]

[4] Most regulatory agreements of tax credit projects mandate rent levels based on 50% to 60% of county median income, or less.

[5] The investors and lenders involved in all projects with the Section 214(g) property tax exemption have underwritten their investment and / or loan pro-forma as the case may be in reliance upon the tax exemption. Each investment firm and lender has in turn entered into various agreements with its own individual investors, board of directors or other firms who have relied upon its underwriting. Any significant change to the 214(g) exemption interpretation or process should take into account the obvious correlation between the certification by the managing general partner that the tax exemption is necessary to maintain the affordability of the rents and thus, the entire project's economic viability and the fact that rule changes by SBOE "after-the-fact" such as shortening the period the exemption is available based on the "received" argument mentioned in Issue Number 1 above, would have catastrophic effects on not only the low income developments themselves, but many related businesses which relied upon the project's continued exemption.

ISSUE # 3: Do Federally Insured or Guaranteed Loans Constitute Government Financing Under Rev. & Tax Code § 214(g)(1)(A) ?

The words of the statute are the following:

"**(A) The acquisition, rehabilitation, development, or operation of the property, or any combination of these factors,** is financed with tax-exempt mortgage revenue bonds or general obligation bonds, or is financed by local, state, or federal loans or grants...."

Therefore, according to the language of the statute, one of the alternatives to meet the terms of Section 214(g) is financing by (any)"... local, state, or federal loans or grants...."

Issue # 3 is a bit vague, as it posits the question whether a federally insured or guaranteed loan qualifies as "government financing", whereas Section 1(A) does not mention the term "government financing" nor does it mention "federally insured or guaranteed". It simply states "local, state or federal loans or grants..."

One way to clarify the question might be, "which federally insured or guaranteed loans are you referring to?" One federal agency well known to our firm is Fannie Mae. Fannie Mae is a large purchaser of many of the loans initiated by non-government lenders. These loans are intentionally structured to comply with Fannie Mae's criteria including the fact that the requirements that the loans be secured by real property which is used for the sole purpose of housing for low to moderate income families under the provisions of federal and state law. Without knowing more about "which loans", this question would be difficult to answer, but one way to respond would be to say that if the particular federal source requires the apartment project to be restricted to low income rentals only, there is a good possibility that any such financing would be "government financing" as you've defined it.

ISSUE # 4: Should The Tax Exemption Be Limited To Certain Percentages As Expressed In A Particular Regulatory Agreement?

The short answer to this question is "no". The reason is that there are various regulatory agreements from different funding sources and the reasons each regulatory agreement states for mandating that a particular number of apartment units be restricted to certain rent levels differ, but usually do not control the total number of low-income units in the apartment project. For example, as mentioned in the preamble paragraph above, HOME funds are from a federal program. They are administered in the State of California by the State Department of Housing And Community Development, ("HCD"). HCD's regulatory agreements for home funds typically mandate that less than 49% of the units are restricted to low income housing *to receive HCD's HOME funding.* The regulatory agreement from HCD is structured this way in part because of "Article XXXIV" of the California Constitution, which arguably mandates a local election in the event more than 49% of the apartment units are restricted *by the HCD regulatory agreement.* [see *California Housing Finance Agency v Elliot,* 17 Cal. 3d 575 (1976) and also see Public Housing Election Implementation Law, codified at Health and Safety Code §§ 37000-37002 (the "Act"). However, in projects with HCD/ HOME funding, most are also regulated by a "tax credit" regulatory agreement from the California Tax Credit Allocation Committee and in that agreement, the developer agrees to restrict 100% of the units are affordable within the meaning of Health & Safety Code Sections 50053 and 50079.5.

Another point on this issue is that the current practice of SBOE and the county assessors is to require specific qualifying tenant information for each apartment unit which is claimed to be exempt. Therefore, it would seem there is already a test in place to insure that the applicant is not claiming more units as exempt than actually qualify.

In summary, the answer to this issue is that the percentage of exemption should remain as the percentage of qualifying tenants which are verified by the applicant in either the "first filing" or the "annual filing" for tax exemption, not a number taken from a regulatory agreement. Secondly, each regulatory agreement should be considered together when asking the question how many units are restricted. That is, if one regulatory agreement restricts 49% of the units, but another restricts 100%, then the higher number should be used in this inquiry.

ISSUE # 5: Should Multiple Regulatory Agreements Be Combined?

Part of this answer has been given in Number 4 above. There are concrete reasons that different regulatory agreements recorded against the title to the same apartment development have different percentages of mandatory restrictions on numbers of units in the project. [see #4 ante re: Article XXXIV issues] Therefore, if there are two or three regulatory agreements, each mandating a different number of units to be restricted to low income qualified tenants, the highest number of restricted units in any one agreement or the aggregate number in all the agreements as the case may be, should b used.

Again, the public policy behind the Filante Bill and the change in 1988 allowing limited partnerships with qualifying nonprofit, public benefit managing general partners to qualify for exemption was to allow the largest number of dwelling units possible to be produced with the assistance of the funds which would otherwise be utilized for payment of the property taxes. Keeping this goal in mind helps to make decisions like this one easier. It was clear that the drafters desired to benefit and promote the construction, financing and tax exemption of more rather than less low income units, so any reasonable construction which favors more rather than less is consistent with the Legislative intent. The highest number of units which is legitimately restricted by a proper document or documents, and has qualified tenants residing there, should be used in calculating the number of exempted units or percentage of square footage which is exempt.

ISSUE # 6: Do HUD Vouchers Or Project Based Assistance Qualify As "Government Financing"?

Again, Section 214 (g) does not mention the term "government financing". Section 214(g) refers only to "... local, state, or federal loans or grants...." As recognized by this Issue # 6 statement , Section 8 assistance comes in two basic varieties, (1) project based and (2) voucher. The distinguishing characteristic of a voucher is that it is "personal" to the tenant. In other words, once the local housing authority issues a voucher to a tenant, she can use the voucher at apartment project "A" or "B". Since this "portability" feature means that assuming arguendo that the voucher is some type of "government financing", it is not mandated that it be tied to any particular apartment development. Project based Section 8 on the other hand, is specific to the project, and perhaps more fundamentally, project based Section 8 is routinely considered in the underwriting by "syndicators" (purchasers of the low income housing tax credits) and lenders, when calculating the debt service and income of a particular project. In other words, the project based Section 8 is a government "benefit" paid to a given apartment project, and it is accompanied by a restrictive agreement mandating that the apartment project charge rents within a certain structure which comports with the rents described in Health and Safety Code Sections 50053 and 50079.5 as low-to-moderate income rents.

In summary, our opinion is that the vouchers are not "government financing" to any particular apartment project, whereas the "project based" Section 8 most certainly is.

ISSUE # 7: Should the Management Duties Of the Managing General Partner Be Strengthened?

The short answer to this question is again, "no". I have personally been working with the board and its staff for at least eight years on this topic. For many years, the Board and staff in the past have taken the position that the test for managing general partner duties was the "language test". That is, the SBOE insisted that there be adequate language in the limited partnership agreement to describe the duties of the managing general partner and to illustrate that the duties were regular, substantial and continuous, (using the terminology of the IRS). My consistent position with the Board and staff during this "language" period has been that low income housing developers and nonprofits which are the MGP's of qualified limited partnerships *want to comply* with SBOE's rules and regulations, but the SBOE needed to make it clear what exact type of language was sufficient.

After several years of advocating this position, finally in the summer of 1999, SBOE gave the low income housing development community specific language in the form of three "examples" of appropriate managing general partner language for the partnership agreements. When we received this language, we immediately notified our clients and notified other law firms who represent the "syndicators" or investors in the low income housing tax credits, as it is they who draft most of the "amended and restated" partnership agreements.

On December 19, 2002, SBOE approved two new forms, the Supplemental Affidafit, (BOE-267-L-1) and (BOE-267-L-2). The intent of these forms was to "streamline" the filing and review process of exemption claims for lower income housing." [letter from Mary Ann Alonso, Senior Tax Counsel, February 11, 2003, pg. 1, ¶ 3] These forms were developed after SBOE staff found it had been inundated with partnership agreements to review, as it had established as criteria for granting the property tax exemptions that there had to be a "dual review" of each application and each partnership agreement (one review by the county assessor and another by SBOE staff).

This 2002 change in procedure by the SBOE staff was in fact a "streamlining" of the process. Board staff didn't have to review all of the partnership agreements any longer, and the Managing General Partner of each partnership certified in writing to the SBOE and the county assessor that the partnership agreement met the tests set forth in the "laundry list" of possible duties listed on the BOE-267-L-1 and BOE-267-L-2 forms.

Later in November of 2002 SBOE introduced the BOE –277 form (the Organizational Clearance Certificate form) and still a little later, its companion form, the BOE-277-L-1 (Supplemental Clearance Certificate) the latter of which further clarifies the role of the managing general partner and asks the managing general partner to again certify that the operable limited partnership agreement contains the appropriate language which adequately outlines the duties and responsibilities of the managing general partner per SBOE's guidelines.

The long and short of this issue is that the SBOE over the past ten (10) years has made it abundantly clear what its desires are as far as duties of the managing general partner and the Board now requires the managing general partner to certify on two separate forms that it has met the requirements set forth by SBOE. [see, eg. SBOE letter of May 7, 2004 to Assessors and Interested Parties, Attachment C, pg. 9, footnote 19] For example, on the BOE-277-L-1 (Supplemental Clearance Certificate) form, the managing general partner is asked to swear that the nonprofit has "control over the business, assets and affairs of the partnership" [BOE-277-L-1, @ ¶ 11 (A)(1) and that the managing nonprofit partner satisfies at least two of the ***nineteen separate duties*** enumerated by SBOE in subparagraph 11 (A)(2). No further consideration of "duties" is needed.

ISSUE # 8: Does Rev. & Tax. Code Section 214 (g)(2)(B) Require Lower Rents Than Either The Codes or the Regulatory Agreement ?

Revenue & Taxation Code Section 214 (g)(2)(B) reads as follows:

"Certify that the funds that would have been necessary to pay property taxes are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income households."

Even if the above Issue # 8 means Revenue and Taxation Code Section 214(g) (3), which reads:

"As used in this subdivision, "lower income households" has the same meaning as the term "lower income households" as defined by Section 50079.5 of the Health and Safety Code."

The answer is "no", Section 214(g) does not require lower rents than those already established by HUD through its Section 8 program and the publishing of the "median income figures" for each California county mentioned above.

Section 50079.5 of the Health and Safety Code reads as follows:

HSC §50079.5. (a) "Lower income households" means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. The limits shall be published by the department in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development. In the event the federal standards are discontinued, the department shall, by regulation, establish income limits for lower income households for all geographic areas of the state at 80 percent of area median income, adjusted for family size and revised annually.

The HUD median income numbers are published by HUD on a county-by – county basis for the State of California as well as other states and are the same benchmark used by the California Tax Credit Allocation Committee and the California Debt Limit Allocation Committee as well as all other California low income housing organizations to compute the appropriate county-by- county rent structures for given family sizes.

Thank you so much for taking the time to read and consider this letter and for your assistance and participation in this important area of the law for low income households who are the primary beneficiaries of Section 214(g).

Sincerely,
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Comment Submission and Response to BOE Notice

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To: Members and Staff of the Board of Equalization

Re: BOE Notice to Interested Parties Dated January 14, 2005
Welfare Exemption for Affordable Housing Developments

COMMENT SUBMISSION AND RESPONSE TO BOE NOTICE

Tax policy and housing policy have long been inextricably linked, and tax incentives have always played an important role in the state's housing policy. In light of the high cost to develop affordable housing in California, the "Welfare Exemption" under California Revenue & Taxation Code Section 214(g) has become an increasingly important development incentive which affordable housing owners have relied upon as vital. Given the unfortunate dual circumstances of a chronic shortage of affordable units and the increasing costs to develop in California, now is not the time to change tax policy which will impact the number of housing units to be developed. In light of the importance of the Welfare Exemption to the affordable housing industry in California, we respectfully submit the following comments to the Board of Equalizations Notice to Interested Parties dated January 14, 2005 (the "BOE Notice"). The BOE Notice stated the BOE will consider four proposed rules relating to the implementation of the Welfare Exemption based upon certain "key issues" to be addressed at its March 16, 2005 meeting. We believe changes to the existing implementation of the Welfare Exemption as averred to in the BOE Notice will have an adverse impact on the development of affordable units throughout the state. The purpose of this submission is to (i) provide context to the importance of the Welfare Exemption within the affordable housing industry, and (ii) comment specifically on certain "key issues" identified in the BOE Notice. We understand the rule making process "commences" on the BOE's March 16th meeting, however, there are proponents which have or will be submitting requests to the BOE which will drastically change the exemption from its current use. The following is submitted to facilitate dialogue with those proponents for change, as well as for the benefit of the BOE in its consideration of the four proposed rules.

Affordable Housing Industry's Use of Exemption & Its Multiplier Effect

Absent rent subsidies or government financing, tax relief is one of the few incentives available to property owners of affordable housing developments. Nonprofits and joint-ventures between for-profit and exempt owners of affordable housing have long used the Welfare Exemption to maintain affordable rents to low-income residents, fund tenant programs and to make certain affordable projects viable. Owners have further strengthened the effect of the tax relief by leveraging the amount of the tax abatement into additional loan or equity proceeds from the private capital markets. The additional proceeds are then used to finance the development of more units, maintain deeper-skewed rents, increase services or to defray increasing development costs. Together, the Welfare Exemption and its "multiplier effect" have resulted in greater financial feasibility of affordable projects and significantly more units being created or maintained as affordable in California. Thus, the affordable housing industry has strengthened the efficacy of the State's tax incentive, and to date, the Welfare Exemption is one of the most efficient forms of public housing subsidies in California.

Tax Relief is a Cost Effective Program

Use of the Welfare Exemption has been shown to be a cost-effective resource for the development of affordable housing. In a survey of properties conducted by the Department of Housing and Community Development ("HCD") in 2003-03, HCD reviewed the fiscal impact to the County of Orange, California as it related to the cost of the tax abatement for five (5) affordable housing projects. The five (5) projects collectively delivered 563 rent-restricted units to low-income residents.

The HCD survey measured the amount of the tax relief against (i) the additional subsidies required, and/or (ii) the additional rent required, to offset an increase in ad valorem property taxes without the exemption. HCD concluded the total annual value of the tax exemption for the five projects was $846,950 (See Table 1- Column (E) below). Based upon Orange County's share rate of 7% of the 1% ad valorem taxes for the 5 properties, the fiscal impact to Orange County was $59,287. However, HCD concluded that if these projects were required to pay ad valorem taxes, the county would be required to increase public subsidies totaling about $9 million to deliver the same number of affordable units. If rents were increased in lieu of (or together with the additional subsidies required in certain instances), rents would have necessitated an increase in average rent of $125 per unit per month. For a two-bedroom unit affordable to a family earning 50% of Area Median Income in 2002-03, this would result in a 15% rent increase, and would raise the income needed to afford the unit to 57% of Area Median Income which would make the project ineligible for many subsidy programs. The HCD study cited the main financial impact to affordable housing developments of a requirement to pay the ad valorem property taxes would be a decrease in the amount money available to service debt. The loss in debt service leaves a financial gap in the project, which either can be filled by (1) additional sources of below market rate financing (in the amount of $9 million), and/or (2) increasing the rents. The purpose of the preceding illustration is to evidence the Welfare Exemption's increasingly important role in the development of affordable housing in California. Undoubtedly, the amounts of additional sources of below-market rate financing and rent increases to finance the funding gap would be larger in 2005-06. It is also worthy to note the County of Orange maintained its Welfare Exemption program.

Table 1 (next page) is taken from the HCD study discussed above. Table 1 provides a summary of estimated property tax exemptions for the five affordable housing developments in Orange County, California in 2002-03. The Table also presents estimates of the additional subsidy and/or the additional rent required to offset the increase in property taxes in the event that payment of ad valorem taxes were to be required.

For-Profit Development Community Contribution

The primary contributor to the development of affordable units in California in recent years has been for-profit, non-exempt entities, either in collaboration with non-profit entities in joint-ventures or as sole project sponsors. Based upon information provided by the California Tax Credit Allocation Committee ("CTCAC") and the California Debt Limit Allocation Committee ("CDLAC") for their most recent competitive rounds for tax credits and tax-exempt bond allocation, respectively, joint-ventures and for-profit project sponsors have been the primary contributors of affordable units in California. In the recent CTCAC competitive round for 9% tax credits, eleven (11) of the sixty-eight (68) recipients of credits were non-profit sponsored. The remainder of the recipients were joint-ventures and for profit sponsored. In the recent CDLAC competitive round for allocation of private activity bond volume cap, eleven (11) of thirty-eight (38) recipients of tax-exempt bond allocation were non-profit applicants. Once again, the remainder of recipients were joint-ventures between for-profit and exempt entities, or exclusively non-exempt entities which could share the ownership and operation of projects with exempt entities. Unfortunately, government and nonprofit groups alone will not be able to produce the units that are lost due to decrease in joint-venture or for-profit unit production. Many of these entities do not have the additional capacity or resources to replace the units which could be lost by changes to the implementation of the Welfare Exemption.

Loss or Limitation of Welfare Exemption Will Likely Impact Housing Production

The BOE Notice indicates four proposed rules for the implementation of the Welfare Exemption will be considered by the BOE based upon consideration of certain "key issues." The tenor and effect of each key issue in the BOE Notice would be to limit the availability or scope of the Welfare Exemption. The staff of the BOE has submitted a written response to our firm to clarify its position and recommendations for the four proposed rules, as well as to suggest that no significant changes are to be recommended. We concur with many of the BOE staff recommendations, and laud the BOE staff for its proactive response to our firm's client alert on the proposed changes. However, we also believe there will be several recommendations from industry participants to significantly change the scope or availability of the Welfare Exemption from its current use. And as such, we submit that any change to the current implementation of the Welfare Exemption will likely impact the production of affordable housing units.

Limiting the scope or availability of the Welfare Exemption to existing project beneficiaries could result in adverse financial circumstances for projects located in softer markets or which have taken on additional costs as a result of the tax relief. As highlighted in the HCD study, existing projects would need to seek additional below-market rate financing or increase tenants rents to offset the increase in property tax liability. An inability to do exercise either option due to rental restriction require-

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Table 1: Impact of No Ad Valorem Property Tax Exemption

		With Ad Valorem Exemption			Without Ad Valorem Property Tax Exemption						
Project	Units	(A) Annual Taxes Payable	(B) County Subsidy (one-time subsidy)	(C) County Subsidy Per unit	(D) Annual Taxes Without Exemption (Year 1)	(E) Total Increased Taxes [County 7%]	(F) Total (A) Subsidy Increase	(G) Increased Subsidy Required Per Unit	(H) Total Subsidy Required (B+F)	(I) Total Subsidy Per Unit Required (C+G)	(J) Est. Increase in Rent Needed to Offset Taxes
Dorado Senior Apartments	150	$ 48,000	**$1,200,000**	**$8,000**	$288,000	$240,000 [$16,800]	$2,487,263	$16,582	**$3,687,263**	**$24,582**	$133
Linbrook Court	81	$ 25,346	**$800,768**	**$9,886**	$152,076	$126,730 [$8,871]	$1,352,905	$16,703	**$2,153,673**	**$26,589**	$130
Talega I**	124	$214,072	**$2,553,438**	**$20,592**	$405,489	$191,417 [$13,339]	$2,101,835	$16,950	**$4,655,273**	**$37,543**	$129
Vintage Shores	122	$28,564	**$472,578**	**$3,874**	$171,385	$142,820 [$9,997]	$1,473,424	$12,077	**$1,946,002**	**$15,951**	$98
Westminster Intergeneration. *	86	$29,196	**$687,000**	**$7,988**	$175,179	$145,982 [$10,219]	$1,679,866	$19,533	**$2,366,866**	**$27,522**	$141
TOTAL	**563**	**$345,179**	**$5,713,784**		**$1,192,129**	**$846,950 [$59,287]**	**$9,095,293**		**$14,809,077**		
Percentage increase in 2 bedroom rent@ 50% of median ($850/month)											15%
Affordability level with property tax payment											57%

***Preliminary information- not yet approved by the Board for subsidy.**
**** The Talega project taxes include the payment of Mello Roos fees.**

Assumptions: Tax Rate = 1% County share = 7% of 1% Assessed Value= Based on Total Development Cost

Subsidy Per Unit is calculated across all units, although in the case of the Vintage Shores development, the County is restricting only 11 units, the remainder of units are restricted by other funding sources.

ments or market characteristics could result in foreclosures or forced sales of existing affordable developments. For future housing production, the scope and availability of the Welfare Exemption needs to be examined in light of the current economic and regulatory environment facing the affordable housing industry. Without tax relief, property owners would need to seek additional below-market rate financing from housing programs with already limited resources. Moreover, developers of affordable housing have experienced significant increases in construction due to price increases of supplies such as lumber, cement, steel, etc. as well as substantial increase in labor costs due to the application of prevailing wage requirements. Developers are also wary of rising interest rates, and the impact of the State and federal budget deficits which often result in decreased funding for affordable housing programs. On the local level, the State and federal budget deficits have resulted in local jurisdictions offering fewer incentives such as impact fee or permit fee waivers, as well as grant and loan money. Changes to the current implementation of the Welfare Exemption will have a disparate impact on for-profit production of affordable units. Many industry insiders believe the loss of the Welfare Exemption won't preclude for-profit developers from continuing development in its entirety, but it will likely impact the number of units produced in the aggregate.

Proponents For Change to Welfare Exemption and Its Current Implementation

Many of the proponents for change to the current implementation of the Welfare Exemption have been motivated by stories of abuse of the incentive. These are valid concerns. However, we do not believe drastic changes to the Welfare Exemption or its implementation are the appropriate response these concerns. There are existing federal and state agencies with tested enforcement mechanisms which are more appropriate venues for these concerns. We believe tax and housing policies should be based upon developing a continuum of incentives to encourage more affordable housing for the States residents, and not upon isolated cases of abuse. Specifically, the California Attorney General on the state level and the IRS on the federal level are the appropriate agencies to address issues of abuse by non-profit entities or transactions in which private parties are unduly benefiting from an affiliation with a non-profit, exempt entity. Every exempt entity and non-profit organization operating in California is subject to the jurisdiction of the California Attorney General as it relates to State matters and the IRS as it relates to federal matters. There is also substantial case law, guidance and a precedent for sanctions published by the IRS relating to private benefit and joint-ventures between for-profit and exempt entities, as well as it relates to private inurement by controlling officer and directors of non-profits. Also, since the non-profit managing general partner is certifying under "penalty of perjury" as to its submission of the BOE-267-L1, Welfare Exemption Supplemental Affidavit, Housing-Lower-Income Households (Limited Partnership), and the OE-277-L1, Claim For Supplemental Clearance Certificate For Management General Partner, there are potential criminal actions for those engaged in fraud.

Some proponents of change are also motivated by the prospect of enhancing their ability to compete in the marketplace. However, public policy should be based upon affordable unit production in the State and not an exempt entity's ability to compete in the market place. Based upon our experience and interpretation of the statistics from CTCAC and CDLAC over the last several years, government and nonprofit groups alone will not be able to produce the units that are lost due to decrease in joint-venture or for-profit unit production.

Proposed Changes Result in Chilling Effect

Many industry participants have expressed concern over the number of changes instituted and/or proposed by the BOE as it relates to the Welfare Exemption. Recent changes to the Welfare Exemption program, as well as proposals to consider changing the current implementation of the Welfare Exemption, may have a "chilling" effect on the willingness of lenders to underwrite the exemption. If the BOE determines no substantive changes should be made to the Welfare Exemption, many in the affordable housing industry would welcome an affirmative position or commitment to maintaining an expansive interpretation of the exemption's availability for low-income housing.

COMMENTS TO CERTAIN KEY ISSUES

Key Issue: Whether Section 214, Subd. (g)(2)(B) requires owners to charge lower-rents than those prescribed by statute (Health and Safety Code) or the regulatory agreement for the property.

We concur with the current BOE staff interpretation of Revenue and Taxation Code Section 214(g)(2)(B) on this key issue, but provide the following additional comments. We understand the current BOE staff recommendation to be that Section 214, subd. (g)(2)(B) does not require lower rents than those required by the regulatory agreement or the Health and Safety Code. Tax relief or abatement is necessary to the viability of financing of the project in an affordable housing program that requires rent restrictions. The rent restrictions of existing government financing programs decrease gross revenue which in all cases significantly affects (decreases) loan sizing. Abatement is a partial equalizing subsidy that allows the project to earn more proceeds which, in almost all cases, is necessary to complete construction or the acquisition rehabilitation project. Generally, tax relief for an 100% affordable project increases the loan by 10%. Ongoing tax abatement is, of course, necessary to meet debt service and operating expense obligations. This is good public policy. Developers would build very little affordable housing except for the available subsidies.

In sum, we submit the following positions/comments:

- Section 214, subd. (g)(2)(B) does not require lower rents than those prescribed by the Health and Safety Code.
- Tax abatement is necessary to the viability of financing of the project in an affordable housing program that requires rent restrictions. The Welfare Exemption is a partial equalizing subsidy that allows a project to earn a little more proceeds, which in almost all cases is necessary to complete construction or the acquisition rehabilitation project.
- Welfare Exemption is an efficient and effective incentive for developers of affordable housing. The HCD Study has shown the relatively small impact to the County of Orange, California, in light of the amount of the greater level of benefit derived from the current implementation of the Welfare Exemption.
- Rent restrictions different than those required under existing government financing programs under the Health and Safety Code would unduly over-regulate the affordable industry by running counter to sister-agency requirements.

Key Issue: Whether properties without government financing that are awarded federal low-income housing tax credits and operating under regulatory agreements that restrict a portion of the property for rental to lower income housing continue to be eligible for exemption after the period in which the property received tax credits has expired.

We concur with the current BOE staff interpretation of Revenue and Taxation Code Section 214(g)(2)(B) on this key issue, but provide the following additional comments. We understand the current BOE staff recommendation to be properties that receive federal and/or state lower income housing tax credits would be eligible for exemption for the duration of the regulatory agreement. This needs to be the case in order for affordable housing programs to continue to operate effectively in California.

Under the federal low income housing tax credit program, an eligible property owner receives tax credits for 10 years starting from the placed in service date of the project. However, under State and Federal rules, the project remains subject to a recorded regulatory agreement for at least 30 years and in many cases 55 years. The recorded regulatory agreement requires low income tenancy and rent restrictions based on 60% of the area median income as determined by HUD or less. Tax credit regulatory agreements are similar to other regulatory agreements required due to a governmental subsidy, such as tax-exempt bond financing. Projects subject solely to a tax credit regulatory agreement should be afforded the same property tax benefits as a property subject to a tax-exempt bond regulatory agreement. In both situations, project gross revenues are limited by the regulatory agreements necessitating the expense savings of property tax abatement for economic viability. Although matching property tax abatement with the 10-year tax credit period provides a significant subsidy, it runs short of the remainder of the restricted term and in light of actual practice within the industry. Conventional lenders on these projects underwrite the abatement enabling the lender to loan more loan proceeds which loan proceeds are used for qualified uses under the tax credit program. Conventional loans are almost always structured to run at least the 15 year minimum tax credit compliance period under the Internal Revenue Code as required by the tax credit investment community. Conventional lenders will be unable to underwrite the abatement if it is lost in year 11, well prior to the amortization and maturity of their loan. In other words, since debt service is roughly level, abatement is necessary to make loan payments if the loan was sized assuming abatement. Project owners would likely default in year 11 if the abatement period is shortened.

In sum, we submit the following positions/comments:

- Properties that receive federal and/or state lower income housing tax credits should be eligible for exemption for the duration and term of the regulatory agreement.
- Tax abatement is necessary to the viability of financing of the project in an affordable housing program that requires rent restrictions. Project owners would likely default in year 11 if the abatement period is shortened to match the ten-year credit period.
- Terms of Welfare Exemption benefits shorter than the rent restrictions agreed-upon by owners under government financing programs under the Health and Safety Code would likely result in shorter terms of affordability.

Key Issue: Whether the requirements with respect to the management authority and duties of a managing general partner should be strengthened beyond those currently required on BOE-267-L1, Welfare Exemption Supplemental Affidavit, Housing-Lower-Income Households (Limited Partnership), or OE-277-L1, Claim For Supplemental Clearance

Certificate For Management General Partner. These forms are posted on the BOE's Web site at:

www.boe.ca.gov/proptaxes/pdf/boe267l1.pdf; and www.boe.ca.gov/proptaxes/pdf/boe277l1.pdf

We believe the respective provisions of (i) the California Revised Limited Partnership Act, Corporation Code Sections 15611-15681, as amended (ii) the substantive body of contract law, and (iii) the IRS' guidance on activities of non-profit entities, should be determinative on the issue as to whether a non-profit managing general partner of a limited partnership owner has the requisite management authority of the owner entity.

Although Section 214, subd.(g) does not specifically define what is a qualifying managing general partner nor delineate what duties it should possess for purposes of the exemption, we believe the BOE should defer to the existing legal and statutory framework for such determination. Specifically, the guidance found in (i) the California Revised Limited Partnership Act, Corporation Code Sections 15611-15681, as amended (ii) the substantive body of contract law, and (iii) IRS' guidance on activities of non-profit entities, each provide the appropriate level of guidance for non-profits engaged in joint-ventures with non-exempt entities. Each of these preceding bodies of law are highly evolved and provide sufficient guidance to non-profit entities, in both scope and breadth, when an exempt entity is acting as a general partner in a limited partnership with non-exempt entities.

We understand the BOE staff position to be that the managing general partner should have management authority and duties in the partnership operations that it actually performs, rather than having the sole purpose of obtaining the property tax exemption. However, we do not believe there should be any specific requirements as to the identity or duties of a non-profit managing general partner in addition to those required under BOE-267-L1, Welfare Exemption Supplemental Affidavit, Housing-Lower-Income Households (Limited Partnership), and the OE-277-L1, Claim For Supplemental Clearance Certificate For Management General Partner. Moreover, because the non-profit managing general partner is certifying under penalty of perjury when it signs these documents, criminal sanctions or actions could be pursued for abusive or fraudulent transactions. Additional requirements imposed on non-profit entities engaged in joint-ventures with non-exempt entities could contradict existing guidance.

Any instances of abuse or fraud by non-profits should be addressed by the appropriate agencies with enforcement expertise. Current legal framework address and protect against for-profit and non-profit abuse of benefit. There are existing enforcement federal and state mechanisms which are more appropriate venues for these concerns to be addressed. We believe policies of tax incentives should be based upon developing a continuum of incentives to encourage more affordable housing for the States residents, and not upon isolated cases of abuse. The California Attorney General on the state level and the IRS on the federal level are the appropriate agencies to address issues of abuse by non-profit entities or transactions in which private parties are unduly benefiting from an affiliation or venture with a non-profit, exempt entity.

In sum, we submit the following positions/comments:

- There should be no additional requirements for managing general partners. The BOE should defer to provisions of (i) the California Revised Limited Partnership Act, Corporation Code Sections 15611-15681, as amended (ii) the substantive body of contract law, and (iii) IRS' guidance on activities of non-profit entities, on the issue as to whether a non-profit managing general partner of a limited partnership owner has the requisite management authority of the owner entity.
- Any instances of abuse or fraud by non-profits should be addressed by the appropriate agencies with enforcement expertise. Current legal framework address and protect against for-profit and non-profit abuse of benefit. There are existing enforcement federal and state mechanisms which are more appropriate venues for these concerns to be addressed.
- Certain proponents for changing the current implementation of the Welfare Exemption are requesting restrictions on fees, distributions or other attributes of project ownership and contract rights. These types of changes will unduly interfere with the contractual relationship among parties and likely hinder cooperation among parties with disparate resources and expertise.

Key Issue: Whether the exemption on low-income housing properties should be limited to the stated percentage specified in the regulatory agreement(s) that the owner is legally required to restrict for rental to lower income households.

Tax abatement is necessary to the viability of financing of the project in an affordable housing program that requires rent restrictions. The rent restrictions of existing government financing programs decrease gross revenue which in all cases drastically affects loan sizing. Abatement is a partial equalizing subsidy that allows the project to earn a little more proceeds, which is in almost all cases necessary to complete construction or the acquisition rehabilitation project. Without tax abatement, project owners will need to seek additional below-market rate financing or increase tenants rents.

We believe this key issue is also focusing on what the affordable housing community calls "mixed-income projects." That is projects that due to the government financing requirements, project owners have only set-aside 20% or 40% of their units for very low tenants (50% of area median income) or low income tenants (50% of area median income), respectively, at affordable rents. The problem of financial viability is often further exacerbated with mixed-income projects, as these projects tend to be located in more expensive markets. Without the incentive programs, many similarly situated projects will not be built, or if built, then without restricted units in order to meet the higher debt loads. Certain mixed-income projects are owned by joint-ventures in which a non-profit entity is acting as a its managing general partner. These owners apply for property tax abatement based on the percentage of qualifying tenants in the applicable year. In many cases, abatement is provided for more than the rent restricted units under the regulatory agreement. Once again, the ability of these projects to apply for greater than the restricted percentage is important for debt underwriting and to maintain affordable rents to these projects. Lenders will generally underwrite the amount of the tax relief, which underwriting is necessary for project feasibility. Moreover, in many mixed-income projects abatement savings is traced to tenant programs or social service programs administered in connection with the project. These program invariably benefit the low income tenant more that the market rate tenant. Abatement should be afforded to all tenant units that benefit from these programs that would not exist but for the regulatory agreement and abatement.

In sum, we submit the following positions/comments:

- Tax abatement should be in an amount equal to the percentage tenancy by low-income individuals. Tax Abatement is necessary to the viability of financing of the project in an affordable housing program that requires rent restrictions. Often these projects are in expensive markets. Without the incentive programs, many similarly situated projects will not be built, or if built, then without restricted units.

REMAINDER OF KEY ISSUES IDENTIFIED IN BOE NOTICE

We concur with the recommendations of the staff of the BOE on the remainder of the key issues identified in the BOE Notice. Specifically, we understand the positions and staff recommendations to be as follows:

Key Issue: Exemption qualification of properties that have refinanced government loans. The BOE staff is researching this issue, but will likely recommend that the properties remain eligible for exemption if the property remains subject to a regulatory agreement that restricts all or a portion of the property for rental to lower- income households.

Key Issue: Exemption qualification of properties with federally-insured loans. The BOE staff position is that properties with federally-insured loans satisfy the "government financing" criteria under section 214, subd. (g)(1)(A), and the regulatory agreement issued for the loan meets the requirement that a regulatory agreement restricts the property for rental to lower-income households.

Key Issues: Exemption qualification of property with multiple agreements. Where there are multiple regulatory agreements for a single project, the agreements may be combined to determine the percentage of units eligible for exemption.

Key Issue: Exemption qualification of projects with section 8 tenant vouchers. Properties without either tax credits or government financing are not qualified for exemption solely on the basis that some units are rented to lower-income households with tenant vouchers. The tenant vouchers are a federal government rent subsidy for the lower income tenant, and as such, do not satisfy the requirement that the property have government financing in section 214, subd. (g)(1) (B). The staff is researching the issue of whether properties without either tax credits or government financing, but having project-based section 8 may be considered to satisfy the government financing criteria and be eligible for exemption.

Retirement Housing Foundation®

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Assessment Policy & Standards Division
State Board of Equalization

February 28, 2005

Mrs. Ladeena Ford
State Board of Equalization
Property and Special Taxes Department
PO Box 942879
Sacramento, CA 94279-0064

RE: March 16th Meeting Regarding Welfare Exemption Rules

Dear Mrs. Ford:

I am writing as President and CEO of Retirement Housing Foundation, a national, faith-based, mission-driven, nonprofit with 149 communities in 24 states, the District of Columbia, Puerto Rico, and the Virgin Islands. Our corporate office is in Long Beach, and 62 of our properties are located in California. The majority of our properties are for persons 62 years of age and older, although we do have some properties for economically disadvantaged families and persons with disabilities, such as mobility impaired, developmentally disabled, or chronically mentally ill. RHF constructs and acquires housing using a variety of financing mechanisms, including tax-exempt bonds, the HUD 202 program, HUD 236, HUD 221D-3, tax credits, and HUD 811.

The demand for affordable housing in California is critical. Allow me to give you just a few examples.

- Amistad Plaza, located in Los Angeles, a tax-credit family facility with 51 apartments, constructed in 1999, has a waiting list of 995 families.
- Angelus Plaza, the largest affordable senior facility in the nation, with 1,093 apartments, built in 1981 with tax-exempt bonds and the HUD 221D-3 program, has 2,208 on the waiting list with an average turnover of apartments at eight to ten a month.
- Colonia Jess Lopez, an 88-unit facility in Los Angeles, built under the HUD 202 program has a waiting list of 147.
- Granada Gardens, a HUD 236 property in Granada Hills that RHF acquired in 1997, has 169 apartments for low-income families and a waiting list of 486.
- Holly View, a 100-unit tax-credit senior property built in Hollywood in 2003 has a waiting list of 615.
- Pilgrim Tower North, a 158-unit HUD 258 property built in 1974 in Pasadena, and Pilgrim Tower East, 158 units built in 1979 with CHFA bonds – Together these two communities have a waiting list of 536 seniors.
- Wilshire House, a HUD 202 built in Santa Monica in 1992 with 72 units, has a waiting list of 611.
- Cardosa Village, a HUD 811 project built in 1997 with 21 apartments for families, one member of whom is required to be chronically mentally ill, has a waiting list of 51.

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Member, Council for Health and Human Service Ministries, United Church of Christ
www.rhf.org · TDD (800) 545-1833 EXT. 359 · Email: info@rhf.org

- Ralston Towers, a HUD 236 property built in 1974 in Modesto with 178 units, has a waiting list of 34.

These numbers illustrate that the need for affordable housing in California is acute. When you read the newspapers today, you read that affordability is getting more and more critical.

All of the above properties, as well as our entire California portfolio, are exempt from real estate taxes. This exemption is critical in maintaining affordability. If affordability is lost, a significant number of affordable properties in California will go into default or bankruptcy. If a regulatory agency does permit rents to be increased, the properties will no longer be able to serve their current targeted populations because they could not afford the rent, which will further exacerbate the need among the population who cannot afford any other kind of housing. Furthermore, if tax exemption is lost, it will have the effect of eliminating the construction of most new affordable housing. Even now, tax credit and HUD funding is not enough to pay for construction, and gap financing has to be obtained from a variety of sources. Loss of tax exemption will cause this gap to be even larger. The discussion about providing tax exemption for the first ten years does not really solve the problem, since tax credit projects have 50-year affordability requirements. Many of these properties would not have been developed in the first place if tax exemption had not been granted.

It is important for the Board of Equalization to maintain the existing property tax exemption for affordable housing property, especially those owned or controlled by a legitimate and experienced nonprofit like RHF, who will maintain the affordability even when no longer required to do so by regulation. It is important to realize that it doesn't matter whether the property was financed under the HUD 202 program or 236 program or taxable or tax-exempt bonds or tax credits. The issue is not the method of financing or subsidy. The issue is the long-term rental restrictions that make the rent levels affordable to lower income individuals and families.

I thank you for the opportunity to provide these comments. I plan to attend the March 16th hearing in Sacramento and, if permitted, I will express my views in person.

Sincerely,

Laverne R. Joseph
President & CEO

cc: Betty T. Yee
Bill Leonard
Claude Parrish
John Chiang

Rosewood Court

1888 N. Fair Oaks Avenue
Pasadena, CA 91103
(626) 398-6470 - Tel
(626) 398-6625 - Fax

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February 28, 2005

Mrs. Ladeena Ford
State Board of Equalization
Property and Special Taxes Department
P.O. Box 942879
Sacramento, CA 94279-0064

RE: March 16th Meeting on Welfare Exemption Rules

Dear Mrs. Ford:

My name is Carlos Canepa, I am the Manager of Rosewood Court, a 65 unit affordable housing community located in Pasadena, California. Rosewood Court is owned and operated by Southern California Presbyterian Homes (SCPH), a not-for-profit corporation that has been in business for fifty years. Rosewood Court has been open for one year and our resident population consists of seniors, whose primary source of income is social security or supplement security income. Several of our residents were homeless prior to moving into Rosewood Court. The need for affordable senior housing far out weighs the supply of available units, there is currently over 250 names on the Rosewood Court waiting lists, which is approximately 3-5 years long.

Rosewood Court was developed using federally insured loans, grants, and local housing subsidies. The BOE's proposal to disqualify affordable housing projects financed with federally insured loans from eligibility for property tax exemptions will have a devastating impact on this property. Under our regulatory agreement, we cannot charge monthly rents greater than 30 percent of the resident's monthly income. Operating under a tight budget, there is little room to shift obligations around in the budget and begin paying property taxes. To do so, we would have to take money away from repairs and upkeep to the property, as well as services we have been able to offer residents to help keep them independent and in the community. If we were unable to absorb the additional costs, we would be in danger of violating our regulatory agreements and loan commitments.

If the BOE's proposal to disqualify projects financed by federally insured loans were the law in 1970, I don't think SCPH would ever have developed affordable housing communities. Affordable housing projects are fragile, risky deals because the financing is so difficult to secure. Requiring such projects to pay property taxes would most likely render the deal financially untenable.

I believe that the type of subsidy used to finance affordable housing should not be the focus of whether an exemption applies or not. The test should be whether a property is required by contracts or regulatory agreements to keep rents restricted to an affordable level. I respectfully urge the BOE to maintain the current interpretations of who qualifies for exemption from property taxes.

Thank you for this opportunity to state my views.

Sincerely,

Carlos Canepa
Manager

cc: John Chiang, Fourth District County of Los Angeles
Claude Parrish, Vice-Chairman, Third District Counties of Imperial, Orange, Riverside, San Diego, a portion of Los Angeles, and a portion of San Bernardino

SCANPH

Southern California Association of Non-Profit Housing

3345 Wilshire Boulevard ♦ Suite 1005 ♦Los Angeles, CA 90010 ♦ PH: 213.480.1249 ♦ FAX: 213.480.1788♦ www.scanph.org

March 4, 2005

Mr. Dean Kinnee
State Board of Equalization
Property and Special Taxes Department
450 N Street
Sacramento, CA 94279-0064

Dear Mr. Kinnee,

This letter represents the comments of the Southern California Association of Non-Profit Housing (SCANPH). SCANPH is a regional non-profit association of affordable housing developers and related businesses that seek to produce and maintain housing for low-income families. Our members have built over 62,000 affordable units since 1987.

We have convened our members multiple times to address the proposed welfare exemption rules outlined in the BOE's January 14th letter, and again in its February 24th letter of staff positions. The following positions represent our current thinking about the issues raised, as well as those of the Western Center on Law and Poverty, a non-profit law firm that represents low-income tenants.

SCANPH members resoundingly support the welfare exemption as making the production and upkeep of affordable housing possible. We support the Board's work to improve and strengthen the rules governing the exemption so that the standards are clear, and any abuse of the system is addressed with as much industry consensus as possible.

1. **Exemption qualification of tax credit properties.** We agree with the staff position. Properties that receive tax credits should be eligible for exemption for the duration of the longest regulatory agreement that meets BOE qualifications. It is the regulatory agreement that should be considered for determining eligibility, not any financing mechanisms.

2. **Exemption qualification of properties that have refinanced government loans.** Properties should remain eligible for exemption no matter whether loans are refinanced or not: the most restrictive regulatory agreement in effect for a property should remain the key determiner for the exemption.

3. **Exemption qualification of properties with federally-insured loans.** We support the staff position. Federally-insured loans with proper regulatory agreements should satisfy the "government financing" criteria under section 214, subd. (g)(1)(A). Financing should not determine whether an exemption is allowed; the regulatory agreement should.

4. **Amount of exemption allowed per property.** We agree with the staff position that the percentage of units specified in the most restrictive regulatory agreement should be eligible for exemption. In addition, SCANPH request the BOE clarify rules so that natural fluctuations are accommodated: (a) vacancies for restricted units are not to have

the exemption revoked; (b) restricted units with over-income tenants do not lose the exemption unless the situation is uncorrected for two years; and (c) management units in projects governed by agreements are entitled to the exemption.

5. **Exemption qualification of property with multiple agreements**. We agree with the staff position. Where there are multiple regulatory agreements for a single project, the agreements should be combined to determine the percentage of units eligible for exemption.

6. **Exemption qualification of projects with Section 8 tenant vouchers.** We agree with the staff position that units occupied by individuals with Section 8 tenant vouchers, in the absence of other sources of government financing, should not be qualified for the exemption. We do believe that project-based Section 8 projects are good candidates for the exemption, however, since these projects are indeed tied to a regulatory agreement (Housing Assistance Payment contracts) keeping the units affordable to low-income people. We are working with our members to provide staff with more information about this issue.

7. **Requirements for the nonprofit managing general partner.** We agree with the staff position that non-profit managing general partners must have management authority that it actually exercises, rather than merely functioning as a "shell." To best effectuate rules, SCANPH suggests the BOE approve the convening of a statewide industry-wide task force equally consisting of non-profit developers, for-profit developers, housing advocates, investors and other expert and interested parties to arrive at consensus regarding this issue. We suggest the task force be mandated to provide a range of possible rules for the Board's review, including a majority and minority report if needed, by a time certain. SCANPH volunteers to be a part of such a taskforce.

8. **Qualifying rent levels.** We support the staff position. Projects which operate consistent with the regulatory agreement for the property regarding rent levels and/or that satisfy Health and Safety Code rent level requirements are eligible for exemption, and lower rents are not needed.

Thank you for considering our positions. Feel free to call me with any questions, or Sam Mistrano the Deputy Director of my office who has been working the most closely with our members.

Sincerely,

Jan Briedenbach

Jan Briedenbach
Executive Director

cc: Chairman John Chiang
Board Member Claude Parrish

SCPH
SOUTHERN CALIFORNIA
PRESBYTERIAN HOMES

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Assessment Policy & Standards Division
State Board of Equalization

February 28, 2005

Mrs. Ladeena Ford
State Board of Equalization
Property and Special Taxes Department
P.O. Box 942879
Sacramento, CA 94279-0064

RE: March 16th Meeting on Welfare Exemption Rules

Dear Mrs. Ford:

My name is Gerald Dingivan, I am the President and Chief Executive Officer for Southern California Presbyterian Homes (SCPH), a not-for-profit corporation, providing homes and services to seniors for the past 50 years. SCPH currently owns and operates 19 affordable housing communities that provide much needed decent and safe homes to seniors 62-years of age or older. These seniors' primary source of income is social security or supplement security income. The need for affordable senior housing far out weighs the supply of available units, on average, the waiting lists at our facilities are five years and longer.

SCPH affordable housing communities are developed using federally insured loans, grants, and state housing subsidies. The BOE's proposal to disqualify affordable housing projects financed with federally insured loans from eligibility for property tax exemptions will have a devastating impact on this property. Under our regulatory agreement, we cannot charge monthly rents greater than 30 percent of the resident's monthly income. Operating under a tight budget, there is little room to shift obligations around in the budget and begin paying property taxes. To do so, we would have to take money away from repairs and upkeep to the property, as well as services we have been able to offer residents to help keep them independent and in the community. If we were unable to absorb the additional costs, we would be in danger of violating our regulatory agreements and loan commitments.

If the BOE's proposal to disqualify projects financed by federally insured loans were the law in 1970, I don't think SCPH would ever have developed affordable housing communities. Affordable housing projects are fragile, risky deals because the financing is so difficult to secure. Requiring such projects to pay property taxes would most likely render the deal financially untenable.

516 BURCHETT STREET, GLENDALE, CA 91203 / (818) 247-0420 / FAX (818) 247-3871 / www.scphs.com

I believe that the type of subsidy used to finance affordable housing should not be the focus of whether an exemption applies or not. The test should be whether a property is required by contracts or regulatory agreements to keep rents restricted to an affordable level. I respectfully urge the BOE to maintain the current interpretations of who qualifies for exemption from property taxes.

Thank you for this opportunity to state my views.

Sincerely,

Gerald W. Dingivan

Gerald W. Dingivan
President & Chief Executive Officer

cc: John Chiang, Fourth District County of Los Angeles
Claude Parrish, Vice-Chairman, Third District Counties of Imperial, Orange, Riverside, San Diego, a portion of Los Angeles, and a portion of San Bernardino

Santa Clara Methodist
Retirement Foundation Inc.

February 22, 2005

Mrs. Ladeena Ford
State Board of Equalization
Property and Special Taxes Department
P.O. Box 942879
Sacramento, CA 94279-0064

RE: March 16th Meeting on Welfare Exemption Rules

Dear Mrs. Ford:

My name is Alice Sutton and I am the Executive Officer of the Santa Clara Methodist Retirement Foundation, Inc. which owns and operates two nonprofit housing facilities, Liberty Tower in Santa Clara, a 100-unit senior project, and Wesley Manor in Campbell, a 156-unit senior and disabled project. Built in 1973 and 1979 respectively, Liberty Tower and Wesley Manor provide affordable housing for low-income seniors and disabled persons. Liberty Tower's average resident age is 78 and Wesley Manor's resident average age is 74 (the minimum age of disabled residents is 18). An applicant remains on our waiting list approximately three years before becoming a resident at one of our facilities.

Liberty Tower and Wesley Manor were developed using federally insured loans and operate using HUD Section 8 housing assistance subsidies. The BOE's proposal to disqualify affordable housing projects financed with federally insured loans from eligibility for property tax exemptions will have a devastating impact on these properties. Under our regulatory agreements, we cannot charge monthly rents greater than 30 percent of the resident's monthly income. Operating under a tight budget, there is little room to shift obligations around in the budget and begin paying property taxes. To do so, we would have to take money away from repairs and upkeep to the properties, as well as services we have been able to offer residents to help keep them independent and in the community. If we were unable to absorb the additional costs, we would be in danger of violating our regulatory agreements and loan commitments.

If the BOE's proposal to disqualify projects financed by federally insured loans were the law in the 1970s I do not think Liberty Tower or Wesley Manor would ever have been developed. Affordable housing projects are fragile, risky deals because the financing is so difficult to secure. Requiring such projects to pay property taxes would most likely render the deals financially untenable.

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1655 Winchester Blvd. Campbell, CA 95008-9998
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The type of subsidy used to finance affordable housing should not be the focus of whether an exemption applies or not. The test should be whether a property is required by contracts or regulatory agreements to keep rents restricted to an affordable level. I respectfully urge the BOE to maintain the current interpretations of who qualifies for exemption from property taxes.

Thank you for this opportunity to state my views.

Sincerely,

Alice K. Sutton

Alice K. Sutton
Executive Officer
Santa Clara Methodist Retirement Foundation, Inc.

AKS:

cc: Betty T. Yee, BOE Member Representative

Sycamore
Terrace

1301 San Bernardino Road
Upland, California 91786
(909) 946-2811 / Fax: (909) 949-0366

March 4, 2005

Mrs. Ladeena Ford
State Board of Equalization
Property and Special Taxes Department
P.O. Box 942879
Sacramento, CA 94279-0064

RECEIVED
MAR 07 2005
Assessment Policy & Standards Division
State Board of Equalization

RE: March 16th Meeting on Welfare Exemption Rules

Dear Mrs. Ford:

My name is Frank Fischer and I am the Housing Administrator of Sycamore Terrace, an 100 unit non-profit owned building located in Upland, San Bernardino Count. Built in 1979, Sycamore Terrace provides affordable housing for low-income seniors, whose average age is 83 years. The waiting list to become a resident at Sycamore Terrace is greater than one year.

Sycamore Terrace was developed using federally insured loans and state housing subsidies. The BOE's proposal to disqualify affordable housing projects financed with federally insured loans from eligibility for property tax exemptions will have a devastating impact on this property. Under our regulatory agreement, we cannot charge monthly rents greater than 30 percent of the resident's monthly income. Operating under a tight budget, there is little room to shift obligations around in the budget and begin paying property taxes. To do so, we would have to take money away from repairs and upkeep to the property, as well as services we have been able to offer residents to help keep them independent and in the community. If we were unable to absorb the additional costs, we would be in danger of violating our regulatory agreements and loan commitments.

If the BOE's proposal to disqualify projects financed by federally insured loans were the law in 1970, I don't think Sycamore Terrace would ever have been developed. Affordable housing projects are fragile, risky deals because the financing is so difficult to secure. Requiring such projects to pay property taxes would most likely render the deal financially untenable.

I believe that the type of subsidy used to finance affordable housing should not be the focus of whether an exemption applies or not. The test should be whether a property is required by contracts or regulatory agreements to keep rents restricted to an affordable level. I respectfully urge the BOE to maintain the current interpretations of who qualifies for exemption from property taxes.

Thank you for this opportunity to state my views.

Sincerely,

Frank Fischer
Housing Administrator

cc: John Chiang, Fourth District County of Los Angeles
Claude Parrish, Vice Chairman, Third District Counties of Imperial, Orange, Riverside, San Dieago, a portion of Los Angeles, and a portion of San Bernardino.

URBAN HOUSING COMMUNITIES

February 1, 2005

Ladeena Ford
State Board of Equalization
Property and Special Taxes Departments
P.O. Box 942879
Sacramento, CA 94279-0090

Dear Ms Ford

I am not sure where to begin. I have been involved in the production of affordable housing since the early 1990s and over that time I have witnessed the slow, but certain erosion of the programs, specifically with respect to the federal tax credit and tax-exempt bond programs. I view the welfare exemption as an interregnal part of the programs and its administration is a symptom of a much larger problem.

As we are all aware in California we have a housing crisis. I believe in the power of public/private partnership to conquer some of the most significant social ills of this nation. Fundamental to the success of the partnership is the ability of the public sector to clearly define the objective of each program and to attract expertise and capital from the private sector. If a program arbitrarily limits access and therefore stifles competition it is never a good thing and is contrary to the fundamental principal of attracting expertise.

So given all of this: What is the core objective of the welfare exemption? If the goal is to subsidize the production of affordable housing then why have we limited access to the not-for-profits? By doing so you have effectively limited competition and increased costs.

Recently someone forwarded a letter to me written by Lawrence E. Stone Assessor for the County of Santa Clara to you dated October 21, 2004. I found this letter most troubling. If this letter reflects the view of the State Board of Equalization or other County offices charge with monitoring compliance then we are deeply divided. I can only hope that Mr. Stone is an isolated incident and that he can become more educated as to the issues that we in the industry face. Mr. Stone completely lost site of the core objective which is to subsidize the production of affordable housing. Providing a welfare exemption exclusively for qualifying non profits **never** should have happen. Simply stated the welfare exemption is just one way the counties assist the cities in meeting their affordable housing requirements mandated by the state. If the welfare exemption were

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unavailable then this would create an additional gap the cities would have to fill or those units would never be produced.

You have requested comments regarding specific changes being made to the welfare exemption act. I for one will support any change that will increase access to the welfare exemption and therefore foster competition, I will support any change that will focus the program on the **production** of affordable housing rather then the **producer** of affordable housing, and I will support any change that will try and not "split hairs" between the poor and very poor, but rather will provide housing to all the "working poor" who need it and simply cannot afford it.

Several years ago I had an opportunity to witness the mass demolition of a huge public housing project developed under a program provide by the Department of Housing and Urban Development. It is likely that the demise of this program was a long time in coming, but people simply missed the early warning signs. Let's not let this happen again.

I would welcome any opportunity to discuss this with you further. Should you have any questions please do not hesitate to call me at 323.351.7700.

Sincerely

Douglas R. Bigley
President

Cc: John Bigley
Roger Davila
Jim Kroger
Tom Fischer
Russell Ginise
Darren Smith
Stephen Ryan
Patrick Sabelhaus
Lawrence E. Stone